

ENTERED

August 12, 2016

David J. Bradley, Clerk

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONBRENT CRUMMEY and
CHERYL CRUMMEY,

Plaintiffs,

v.

CIVIL ACTION NO. H-15-0980

UNITED STATES OF AMERICA,
JP MORGAN CHASE BANK, N.A.,
and GREEN TREE SERVICING LLC,

Defendants.

MEMORANDUM, RECOMMENDATION, AND ORDER

Pending before the court¹ is Defendant United States of America's ("the United States") Motion to Dismiss Plaintiffs' First Amended Complaint or, Alternatively, for Additional Time to Respond to Amended Complaint and to Amend Counterclaim. The court has considered the motion, the response, all other relevant filings, and the applicable law. For the reasons set forth below, the court **RECOMMENDS** that the motion to dismiss be **DENIED**.

Plaintiffs jointly filed a complaint against the United States on April 15, 2015.² On October 23, 2015, Plaintiffs filed a joint motion to amend and supplement their complaint.³ The court granted Plaintiffs' motion to amend on November 19, 2015, and docketed Plaintiffs' proposed amended complaint contemporaneously with its

¹ This case was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. See Doc. 17, Order Dated July 27, 2015.

² See Doc. 1, Pls.' Jt. Compl.

³ See Doc. 34, Pls.' Jt. Mot. to Am. & Suppl.

order.⁴ On December 7, 2015, the United States filed its motion to dismiss or, in the alternative, for additional time to respond.⁵ Plaintiffs responded on December 21, 2015.⁶

The United States moves to dismiss Plaintiffs' amended complaint for insufficient service pursuant to Fed. R. Civ. P. 12(b)(5). The United States alleges that service was insufficient because Plaintiffs filed the amended complaint without a certificate of service. However, Plaintiffs attached the proposed amended complaint to their joint motion to amend and supplement.⁷ That motion contains a certificate of service specifying that the United States was served the motion via mail and email.⁸ Thus, the United States was served the proposed amended complaint.

In addition to being served via mail and email, the United States was served electronically. "If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E)." Fed. R. Civ. P. 5. "The notice of electronic filing that is automatically generated by the Court's electronic filing system constitutes service of the document on

⁴ See Doc. 36, Order Dated Nov. 19, 2015.

⁵ See Doc. 38, Def.'s Mot. to Dismiss.

⁶ See Doc. 39, Pls.'s Resp. to Mot. to Dismiss.

⁷ See Doc. 34, Pls.'s Mot. to Am. & Suppl., p. 6.

⁸ See id. The certificate of service leaves open the possibility that the proposed amended complaint was not attached as the certificate does not specify that the motion contains attachments. However, the United States' response to the motion for leave to amend makes clear that the United States had received the proposed amended complaint. See Doc. 38, Def.'s Mot. to Dismiss, p. 1-2.

those registered as filing users of the system." L.R. 5. "Attorneys admitted to the bar of this Court, as well as those admitted pro hac vice, are required to register as Filing Users of the Court's Electronic Filing System." L.R. ECF Admin Proc. 2(A). The attorney for the government is an attorney admitted to this court's bar.⁹ Therefore, when the motion to amend and supplement was filed electronically on October 19, 2015, and when that motion was granted and the amended complaint was filed on November 11, 2015, the United States was served the amended complaint electronically.¹⁰

The United States has been an active party in this action since its filing and has been properly served the amended complaint. On May 20, 2016, the court extended the deadline to amend pleadings to August 19, 2016, and now grants the United States leave to file its amended answer by that deadline.¹¹

Conclusion

Based on the foregoing, the court **RECOMMENDS** that the motion to dismissed be **DENIED**, and the motion for additional time is **GRANTED**.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days

⁹ See Doc. 38, Def.'s Mot. to Dismiss, p. 3.

¹⁰ See Doc. 34-2, Ex. 2 to Pls.'s Mot. to Am. & Suppl., Pls.' Proposed Am. Compl.; Doc. 37, Pls.' Am. Compl.

¹¹ See Doc. 45, Order Dated May 20, 2016.

from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk electronically. Copies of such objections shall be mailed to opposing parties and to the chambers of the undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

SIGNED in Houston, Texas, this 12th day of August, 2016.



U.S. MAGISTRATE JUDGE